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MEMORANDUM



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THRU Matt Rowell
Chief
Telecommunications and Energy

for FROM: Ernest G. Johnson
Director
Utilities Division

Approved

DATE: February 24, 2004

RE: IN THE MATTER OF THE APPLICATION OF OCMC, INC TO OBTAIN A
CERTIFICATE OF CONVENIENCE AND NECESSITY FROM ONE CALL
COMMUNICATIONS, INC. DBA OPTICOM TO PROVIDE
TELECOMMUNICATIONS SERVICES AS A PROVIDER OF RESOLD
INTEREXCHANGE SERVICES AND ALTERNATIVE OPERATOR SERVICES
WITHIN THE STATE OF ARIZONA (DOCKET NOS. T-04103A-02-0274 AND T-
02565A-02-0274)

Attached is the amended Staff Report for the above referenced application. The
Applicant is applying for approval to provide the following services:

- Resold interexchange services
- Alternative operator services

EGJ:JFB:red

Originator: John F. Bostwick

Attachment: Original and Sixteen Copies

Arizona Corporation Commission
DOCKETED

FEB 25 2004

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AMENDED STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

OCMC, INC. AND ONE CALL COMMUNICATIONS, INC. DBA OPTICOM

DOCKET NOS. T-04103A-02-0274 AND T-02565-02-0274

IN THE MATTER OF THE APPLICATION OF OCMC, INC. TO OBTAIN A
CERTIFICATE OF CONVENIENCE AND NECESSITY FROM ONE CALL
COMMUNICATIONS, INC. DBA OPTICOM TO PROVIDE
TELECOMMUNICATIONS SERVICES AS A PROVIDER OF RESOLD
INTEREXCHANGE SERVICES AND ALTERNATIVE OPERATOR SERVICES
WITHIN THE STATE OF ARIZONA

FEBRUARY 24, 2004

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STAFF ACKNOWLEDGMENT

The amended Staff Report for OCMC, Inc. and One Call Communications, Inc. d/b/a Opticom and, Docket Nos. T-04103A-02-0274 and T-02565A-02-0274, was the responsibility of the Staff member listed below. John F. Bostwick was responsible for the review and analysis of the Applicant's application to obtain a Certificate of Convenience and Necessity to provide telecommunications services as a provider of resold interexchange services and alternative operator services.



John F. Bostwick
Administrative Services Officer II

1. INTRODUCTION

On April 9, 2002, OCMC, Inc. (the "Applicant" or "OCMC") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide telecommunications services as a provider of resold interexchange services within the State of Arizona (refer to Docket No. T-04103A-02-0274). As part of the application, the Applicant requested a transfer of the existing CC&N of One Call Communications, Inc. d/b/a Opticom ("Opticom") to OCMC, Inc. (refer to Docket No. T-02565A-02-0274). The management of One Call Communications, Inc., formed OCMC, Inc., and through it, purchased the assets of One Call Communications, Inc. including the right to use the name One Call Communications and its various trade names, including Opticom.

On July 15, 2002, the Applicant filed an amendment to its initial application. In addition to its request to provide resold interexchange services, the Applicant requested a CC&N to provide alternative operator services ("AOS") within the State of Arizona.

Opticom was granted authority to provide resold interexchange services on March 19, 1997 in Decision No. 60106. Opticom was granted authority to provide AOS services on December 14, 1998 in Decision No. 61274.

A Procedural Order issued on January 26, 2004 instructed Staff to amend its Staff Report and provide recommendations with regard to: (1) approval of OCMC's application in light of its Motion to Lift Stay and Notice of Substitution of Counsel filed January 9, 2004; (2) whether the transfer of assets from Opticom to OCMC is subject to the requirements of Arizona Revised Statutes ("ARS") §40-285; and (3) whether the transfer should receive retroactive approval.

Based on Staff's review of the exhibits filed with the Motion to Lift Stay and Notice of Substitution of Counsel, OCMC entered into a Consent Decree that terminates the Federal Communications Commission ("FCC") investigation of OCMC and absolves OCMC of any wrongdoing. In the Consent Decree, OCMC agreed to make a voluntary contribution of funds that represent less than ten percent of fines sought by the FCC and volunteered to conduct a "Best Practice Compliance Program" described in the Consent Decree. Since OCMC has resolved the issues and entered into a Consent Decree with the FCC, Staff continues to recommend approval of OCMC's application as amended on July 15, 2002.

The sale and transfer of assets from Opticom to OCMC is not subject to the provisions of ARS §40-285. There are no known physical or hard assets that were transferred to OCMC. Opticom should comply with all the requirements, except publication of legal notice, as outline in Arizona Administrative Code R14-2-1107 9 (A) (1). Also, the interest of the retail consumer requires Staff to continue with the policy adopted in Decision Nos. 64740, 65124, 66105, and 66737. Opticom needs to inform its customers that they have a 90-day period after notice in which they can decide whether to discontinue services with the new service provider without penalty.

Staff's review of this application addresses the geographic market to be served by the Applicant and overall fitness of the Applicant to receive a CC&N to provide competitive resold intrastate interexchange services and AOS telecommunications services. Staff's review considers the Applicant's technical and financial capabilities, and whether the Applicant's proposed rates and charges will be competitive, just, and reasonable.

2. THE APPLICANT'S APPLICATION FOR A CERTIFICATE OF CONVENIENCE & NECESSITY

Staff's review of the application indicates that the Applicant has provided all required information.

The necessary information has been filed to process this application, and the Applicant has authority to transact business in the State of Arizona. The Applicant has published legal notice of the application in all counties where service will be provided. On June 13, 2002, Applicant filed an Affidavit of Publication from the Arizona Republic that complies with the Commission's notice requirements.

2.1 DESCRIPTION OF THE GEOGRAPHIC MARKET TO BE SERVED

OCMC seeks authority to provide resold interexchange telecommunications services throughout the State of Arizona in all exchanges currently served by Qwest (formerly known as U S West). The Applicant also seeks authority to provide alternative operator services within the State of Arizona.

2.2 DESCRIPTION OF REQUESTED SERVICES

The Applicant proposes to obtain a CC&N for resold interexchange services and to also provide alternative operator services within the State of Arizona.

2.3 THE ORGANIZATION

OCMC is incorporated under the laws of the State of Indiana and has authority to transact business in Arizona.

2.4 TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant has demonstrated sufficient technical capability to provide the proposed services. The Applicant is currently providing resold interexchange services in Arizona. In

addition, the Applicant is currently providing resold interexchange services and AOS services in the District of Columbia and in twenty-one (21) other states. The Applicant is not a switchless reseller. In the event the Applicant's network fails, end users can access other interexchange service providers and AOS providers.

Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide resold interexchange and AOS telecommunications services.

2.5 FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant did provide unaudited financial statements for the six (6) months ending June 30, 2002. These financial statements list assets of \$41.7 million; equity of \$5.0 million; and a net income of \$785,863. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its Tariff, Section 2.1 on page 13.1, that it collects from its customers an advance, deposit, and/or prepayment. As a result, Staff recommends that the Applicant procure a performance bond equal to \$10,000. The minimum bond amount of \$10,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$5,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$1,000 of the bond amount. Staff further recommends that proof of the above mentioned performance bond be docketed within 30 days of the effective date of a Decision in this matter and must remain in effect until further order of the Arizona Corporation Commission ("Commission").

If at some time in the future, the Applicant does not collect from its customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be filed with the Commission for Staff's review. Upon receipt of such filing and after Staff's review, Staff will forward its recommendation to the Commission.

If this Applicant experiences financial difficulty, there should be minimal impact to the customers of this Applicant because there are many other companies that provide resold telecommunications service or the customers may choose a facilities-based provider. If the customer wants service from a different provider immediately, that customer is able to dial a 101XXXX access code. In the longer term, the customer may permanently switch to another company.

3. REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

The Applicant has filed a proposed tariff with the Commission. Also, the Applicant has filed sufficient information with the Commission to make a fair value determination.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, it did not accord that information substantial weight in its analysis.

3.1 COMPETITIVE SERVICES

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the intrastate interexchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

3.2 EFFECTIVE RATES

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with Arizona Administrative Code ("AAC") R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with AAC R14-2-1109.

3.3 MINIMUM AND MAXIMUM RATES

AAC R14-2-1109 (A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with AAC R14-2-1110.

4. ALTERNATIVE OPERATOR SERVICES

This Section of the Staff Report deals with the Applicant's request for a CC&N to provide AOS telecommunications services in Arizona.

4.1 INTRODUCTION

On July 15, 2002, Staff received an application from OCMC for certification as an AOS provider in the State of Arizona.

Alternative Operator Services is a service industry that provides resold telecommunications and operator services to large distinct customers, such as hotels, motels, health care and correctional facilities. The AOS provider will contract with the hotel or correctional facility to provide services. The hotel or correctional facility is referred to as an "aggregator" as in the ordinary course of its operations it allows for intrastate telephone services to be available to its patrons. The patrons of the "aggregator" are referred to as "end-users." AOS services are provided by routing all calls originating from the aggregator premise to the AOS provider, which then handles the call to meet the needs of the end-user.

"End-users" have no control over the aggregator's subscription for long distance service, and as such are essentially captive customers for telecommunications services. The Commission has previously determined that it is in the public interest to ensure that an end user using the telecommunications services of an AOS provider be charged rates consistent with the corresponding rates and service charges of certified facilities-based toll carriers available to the calling public.

Staff has reviewed the authorized rates and service charges applicable to AOS providers. Staff reviewed the rates of AT&T Communications of the Mountain States, Inc. ("AT&T"), MCI Telecommunications Corporation, ("MCI"), Sprint Communications Company, (Sprint), Allnet Communications Services, Inc., ("Allnet"), and US West Communications of Arizona ("US West"). Staff then developed the attached Schedule 1 and 2, establishing maximum rates for the AOS services. These maximum rates coupled with discounting authority provide the market participants with the ability to compete on price and service quality. The Commission adopted these maximum rates in Decision No. 61274.

4.2 RATE REVIEW PROCESS

Staff has reviewed the rates of five major toll carriers to establish the maximum AOS rates, service charges and operator-dialed surcharges set forth on Schedule 1 and 2. If any of the carriers forming the rate group obtain higher rates, the Applicant should be authorized to allow

its rates to float in accordance with the carriers revised higher rates so long as the AOS provider complies with the following tariff filing requirements. The Applicant is required to file: 1) an estimate of the value of its plant to serve Arizona customers; 2) a tariff setting forth the new maximum rates, which do not exceed the maximum rates of the five major carriers set; and 3) all information required by R14-2-1110.

For example, AT&T currently has maximum rates in the night/weekend rate period in mileage bands 0 through 292 for the first minute and additional minutes in Schedule 1. In the event AT&T were to increase its rates in these mileage bands, the rates changed would establish new maximum rates in Schedule 1. Pursuant to Staff's recommendation, the Applicant would be allowed to seek authorization to increase its maximum rates and/or service charges accordingly by complying with the filing requirements described above.

4.3 DISCOUNTING AUTHORITY

Staff recommends that the Applicant should be allowed to discount its rates and service charges to the marginal cost of providing the services. Discount authority will provide the company with pricing flexibility to compete with other providers, as well as allow the potential benefits of price competition to accrue to end-users.

4.4 INTERLATA TOLL CHARGES

Staff recommends interLATA rates and service charges to be based on the maximum rates and service charges authorized for certain interexchange carriers ("IXCs") certificated in Arizona as described above.

Staff recommends that the Commission authorize the Applicant to charge the maximum rate in each mileage band, respective of the day of the week and time of the day, currently authorized for any of the facilities-based IXC's as set forth in Schedule 1. In addition, Staff recommends that the Commission limit the Applicant's service charges to the highest authorized maximum service charge of any of the facilities-based IXC's as set forth in Schedule 1.

4.5 INTRALATA TOLL CHARGES

Staff recommends intraLATA rates and service charges to be based on the maximum rates and service charges of the various facilities-based carriers certified to carry intraLATA toll calls in Arizona as described above.

Staff recommends that the Commission authorize the Applicant to charge the maximum rate in each mileage band, respective of the day of the week and time of the day, currently authorized for any of the various facilities-based intraLATA carries set forth in Schedule 2.

Furthermore, Staff recommends that the Commission limit the Applicant's service charges to the highest authorized maximum service charge of any of the facilities-based intraLATA carriers set forth in Schedule 2.

The attached Schedule 1 and 2 set forth Staff's recommended surcharges for interLATA and intraLATA toll calls respectively.

4.6 OPERATOR-DIALED SURCHARGE AND PROPERTY SURCHARGE

An operator-dialed surcharge is imposed when an end user has the capability to dial the call, but requests the operator to dial and make the call. A property surcharge is a per call bonus paid to the aggregator by the AOS Company. In prior decisions, the Commission has approved both an operator-dialed surcharge and a property (location-specific or subscriber) surcharge.

Staff recommends that the property surcharge be limited to \$1.00 per call. The Commission has approved a property surcharge of \$1.00 for the majority of AOS carriers certified in Arizona. Limiting the property surcharge provides a level playing field for the competitors. Staff recommends consistency in the property surcharge to stress the importance of providing service to the end-users, rather than higher payments to aggregators for the opportunity to serve end-users.

Staff recommends approval of the operator-dialed surcharge and the property surcharge as described in Schedule 1 and 2.

4.7 ZERO MINUS CALLS

The term "zero-minus" refers to calls by individuals who dial "0," and stay on the line until a live operator or attendant comes on. The Commission adopted AAC R14-2-1006.A, which requires the AOS provider to route all zero-minus calls to the originating LEC. The Commission also provided a waiver from the requirement upon a showing that the AOS provider could provide the caller with equally quick and reliable service. OCMC has not requested such a waiver.

4.8 PROPOSED TARIFF

OCMC's tariff filing of June 10, 2002 does agree with the recommendations in the above sections. The Applicant's proposed rates and service charges for either interLATA or intraLATA telephone services are identical to or less than the rates and service charges contained in Staff's attached rate Schedule 1 and 2. Therefore, Staff believes the Applicant's proposed tariffs are reasonable and should be approved at this time.

5. RECOMMENDATIONS

The following sections contain the Staff recommendations on OCMC's application to obtain a CC&N to provide resold interexchange services and AOS telecommunications services.

5.1 RECOMMENDATIONS ON APPLICANT'S APPLICATION

OCMC is incorporated under the laws of the State of Indiana. OCMC is currently providing resold interexchange services in Arizona. In addition, the Applicant is currently providing resold interexchange services and AOS services in the District of Columbia and in twenty-one (21) other states. Staff believes that the Applicant is a fit and proper entity to be granted a CC&N to provide resold interexchange services and AOS services, as listed in Section 2.2 of this Report. The transfer of the existing CC&N of One Call Communications, Inc. d/b/a Opticom to OCMC, Inc. is in the public interest. The transfer of the CC&N to a fit and proper entity helps to ensure that telecommunications services are available on a continuing and ongoing basis. Also, the CC&N granted to One Call Communications, Inc. d/b/a Opticom to provide resold interexchange services and AOS services should be cancelled. Therefore, Staff recommends that the Applicant's application to transfer the existing CC&N of One Call Communications, Inc. d/b/a Opticom to OCMC, Inc. be granted. In addition, Staff further recommends that:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations of customer complaints;
7. The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;

8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;
9. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to AAC R14-2-1108;
10. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in AAC R14-2-1109;
11. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;
12. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero. Accordingly, the company's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, Staff recommends that the fair value information provided not be given substantial weight in this analysis;
13. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;
14. The Applicant's interLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 1;
15. The Applicant's intraLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 2;
16. The Applicant's property surcharge for AOS services be limited to \$1.00 per call;
17. The CC&N granted to One Call Communications, Inc. d/b/a Opticom to provide resold interexchange services and AOS services should be cancelled when the CC&N to provide resold interexchange services and AOS services is granted to the Applicant.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void without further order of the Commission and no time extensions shall be granted:

1. The Applicant shall

- a. procure a performance bond equal to \$10,000. The minimum bond amount of \$10,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$5,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$1,000 of the bond amount;
- b. docket proof of the performance bond within 30 days of the effective date of a Decision in this matter and must remain in effect until further order of the Commission. However if at some time in the future, the Applicant does not collect from its customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.
- c. The Applicant shall file conforming tariffs for its resold interexchange CC&N within 30 days from the date of a Decision in this matter and in accordance with the Decision. Also, the Applicant shall reference this Docket Number and the Decision Number on the Docket Control cover sheet. The Applicant shall mail the Docket Control cover sheet with an Original and sixteen (16) copies of the tariffs to Docket Control, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007-2927.

In addition, Staff recommends that the Commission retroactively approve the sale and transfer of assets from Opticom to OCMC and further recommends that:

- (a) Opticom follow all the requirements, except publication of legal notice, as outlined in A.A.C. R14-2-1107 9 (A) (1) to discontinue telecommunications services within 90 days of the Order date of this docket;
- (b) Opticom should reference the Decision number of this Order and inform the Commission in writing that it has complied with A.A.C. R14-2-1107 within 90 days of the date an Order is effective in this matter;
- (c) The Commission cancel Opticom's CC&Ns to provide resold long distance telecommunication services and alternative operator services, in Arizona within 90 days of the effective date of an Order in this matter;
- (d) Upon cancellation of the CC&Ns, Opticom will not be authorized to provide resold long distance telecommunication services in Arizona and will no longer be subject to any of the requirements of Decision No. 60106. Also, Opticom will not be authorized to provide alternative operator services and will no longer be subject to any of the requirements of Decision No. 61274; and

- (e) Should Opticom fail to docket proof that its retail customers received notification that they may be allowed to elect, within 90 days of receiving notice, to continue or discontinue services with Opticom or a provider of their choice, without prejudice or regard to contractual obligation, that this application shall be deemed denied.

This application may be approved without a hearing pursuant to A.R.S. § 40-282.

SERVICE LIST FOR: OCMC, INC. AND ONE CALL COMMUNICATIONS, INC. DBA
OPTICOM

DOCKET NOS. T-04103A-02-0274 AND T-02565A-02-0274

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